

**The High Court of Madhya Pradesh
WP No. 7675/2011(S)
Prakash Chandra Pandey vs. The State of MP & Ors.**

Gwalior , 24/10/2018

Shri MPS Raghuvanshi, counsel for the petitioner.

Shri Raghvendra Dixit, Government Advocate for the respondents/ State.

This petition under Article 226 of the Constitution of India has been filed challenging the order dated 25th October, 2011 (Annexure P-1) and the charge sheet dated 2nd April, 2011 (Annexure P-2).

The dispute involved in the present case lies in a very narrow compass.

The petitioner, at the relevant time, was working on the post of Naib Tahsildar at Tahsil Office, Morena. In the month of July, 2000 by the order of the Collector, the petitioner was also given the charge of Sub-Registrar, Stamp & Registration, District Morena. In the year 2007, the petitioner was promoted to the post of Tahsildar and was posted at Gyaraspur, District Vidisha and on the date of filing of writ petition, he was working on the said post. On 8th March, 2010, a show cause notice was issued to the petitioner by the State Government as to why the proposal of Commissioner, Chambal Division, Morena dated 30th January, 2009 for institution of Departmental Enquiry be not accepted. The petitioner submitted a detailed reply to the show-cause notice. The reply was addressed to Commissioner, Chambal Division, Morena, Annexure P3. Since the Commissioner, Chambal Division, Morena was not satisfied with the reply submitted by the petitioner, therefore, by order dated 25th October, 2011 (Annexure P1) he directed for initiation of departmental enquiry and accordingly, the charge sheet was issued on 2nd

April, 2011 by the Commissioner, Chambal Division, Morena.

The petitioner has challenged both the order/charge sheet on the following grounds:-

(i) That, on the day when the decision was taken to initiate the departmental enquiry against the petitioner i.e. 25th October, 2011, the petitioner was posted at Vidisha which falls within the jurisdiction of the Commissioner, Bhopal Division, Bhopal and thus, the Commissioner, Chambal Division, Morena had no jurisdiction to initiate the departmental enquiry against him.

(ii) The allegations made in the charge sheet pertain to the year 2000 and the charge sheet has been issued in the year 2011. Thus, there is a delay of about 10-11 years and on this ground only, the charge sheet is liable to quashed.

It is submitted by the counsel for the petitioner that the General Administration Department, Madhya Pradesh, Bhopal has issued a notification, dated 13th August, 1997 by which the Governor of MP has delegated the powers to all Divisional Commissioners of the State to impose the penalties specified in Clauses (i) to (iv) of Rule 10 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 [in short " MP Civil Services (CCA) Rules, 1966"] on Class-I and Class-II officers of the State Government posted within their respective divisions. It is submitted that the words "posted within their respective divisions" are of utmost importance and it should be construed that the officers posted within the jurisdiction of Divisional Commissioner on the date of issuance of charge sheet, would be crucial and not the date on which the alleged misconduct was committed. In the presence case, the alleged misconduct was committed in the year 2000 and on

that date the petitioner was posted within the jurisdiction of Divisional Commissioner, Chambal Division, Morena but in the year 2007 he was transferred as Tahsildar which is a Class-II post and was posted at Vidisha, which is within the territorial jurisdiction of Commissioner, Bhopal Division, Bhopal and thus, as the petitioner was posted within the Division of Commissioner, Bhopal Division, Bhopal on the date when the charge sheet was issued, therefore, the Divisional Commissioner, Chambal Division Morena had no authority or territorial jurisdiction to issue the charge sheet.

Unfortunately, the State in spite of several opportunities did not file return and accordingly, this Court by order dated 18/08/2017 had granted the last opportunity of fifteen days on payment of cost of Rs.5,000/-. Thereafter, neither the cost was deposited nor the return was filed, therefore, the right of the respondents to file their return was closed. Later on, the return was filed and an application was filed for recalling the order dated 04/09/2017 after depositing the cost. Accordingly, the order dated 04/09/2017 by which the right of the respondents was closed, was recalled. However, after going through the return, it is clear that the respondents have not tried to meet out the grounds raised by the petitioner in this petition. The return has been filed in a slipshod, vague and evasive manner. Thus, it is clear that the respondents have not extended any assistance to this Court.

The moot question for determination is that whether the date on which the misconduct was committed, would be material for ascertaining the jurisdiction of the Commissioner or the date on which the charge-sheet was issued, would be material.

The Notification dated 13/08/1997 by which the powers of disciplinary authority to impose the minor penalty under

clauses (i) to (iv) of Rule 10 of MP Civil Services (CCA) Rules, 1966 to the Divisional Commissioner of the State reads as under:-

"Notfn. No.C-6-5-97-3-I, dated 13-08-1997, Pub. in M.P. Rajpatra (Asadharan) dated 13-8-1997, p.855- In pursuance of clause (a) and (b) of sub-rule (2) of rule 12 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, the Governor of Madya Pradesh hereby empowers all Divisional Commissioners of the State to impose the penalties specified in clause (i) to (iv) of Rule 10 of the said rules on Class I and Class II officers (except the Officers of the Judicial Services and the Police Department) of the State Government posed within their respective Divisions."

Undisputedly, the State is the appointing authority and thus, the authority who is competent to remove an employee, would be disciplinary authority as per Rule 10 of MP Civil Services (CCA) Rules, 1966. The powers have been delegated by the Governor of MP to all Divisional Commissioners. Thus, the Divisional Commissioners of the State are exercising their powers on behalf of the disciplinary authority.

It is well-established principle of law that the Principal cannot review the order passed by the delegatee because any order passed by the delegatee would be on behalf of the Principal only but at the same time, the Principal after delegating his power would not lose his original powers of disciplinary authority. One thing is clear that in the present case, the Principal disciplinary authority of the petitioner would be the same. When the alleged misconduct was committed, the petitioner was admittedly working within the territorial jurisdiction of Divisional Commissioner, Chambal Division, District Morena. All the files and witnesses are within the territorial jurisdiction of Divisional Commissioner, Chambal Division, Morena. If the words "posted within their respective

divisions" are interpreted that the date on which the charge sheet is issued, would be crucial, then it may adversely affect the departmental enquiry. In such a situation, all the documents, evidence and witnesses would be required to be transmitted to different Divisions. Further, the charge sheet is issued on the basis of commission of misconduct. Thus, the basis of allegation of commission of misconduct would give rise to cause of action for initiation of departmental enquiry. Under these circumstances, when the Principal disciplinary authority is the same, but the delegates are changed because of transfer/promotion of the petitioner from one Division to another, this Court is of the considered view that the Divisional Commissioner within whose territorial jurisdiction misconduct was committed would be competent to initiate departmental enquiry against the delinquent officer.

It is next contended by the counsel for the petitioner that the alleged misconduct was committed in the year 2000, but the show-cause notice was issued on 08th March, 2010 and charge sheet was issued on 2nd April, 2011, therefore, there is considerable delay of 10-11 years and thus, the charge sheet is bad in law in the light of the judgment passed by Supreme Court in the case of the **State of Madhya Pradesh vs. Bani Singh and another** reported in **AIR 1990 SC 1308**.

The submissions made by the counsel for the petitioner cannot be accepted as the facts of the present case are distinguishable from the facts of the case of **Bani Singh (supra)**.

In the case of **Bani Singh (supra)** itself, it is mentioned that it is not the case of the Department that they were not aware of the said irregularities and there is a delay of about 12 years, therefore, it was held that in absence of any satisfactory explanation for inordinate delay in issuing charge memo, the

same was held to be unfair to permit the departmental proceedings to be proceeded at such delayed stage. In the present case, it is not the case of the petitioner that the Department was aware of the alleged commission of financial irregularities by the petitioner in the year 2007. On the contrary, it is the case of the Department that only when the complaint was made by the President of Association of document writers against the petitioner, then his financial irregularities came into light. Thus, it is the case of the Department that they were not aware of the financial irregularities.

Under Section 17 of the Indian Limitation Act also, the period of limitation shall not begin to run until the fraud is discovered. Thus, when there is a satisfactory explanation then the charge-sheet cannot be quashed merely on the ground of delay. Under the facts and circumstances of the case, this Court is of the considered opinion that no fault can be found in the order dated 25th October, 2011 (Annexure P1) and the charge sheet dated 2nd April, 2011 (Annexure P2).

This Court by order dated 24/11/2011 had stayed the effect and operation of the order dated 25th October, 2011 (Annexure P-1) and the charge sheet dated 2nd April, 2011 (Annexure P-2). The interim order dated 24/11/2011 is hereby vacated.

The petition fails and is hereby **dismissed**.

(G.S.Ahluwalia)
Judge